UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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To: All Field Officials

From: Director

Subject: Wind Energy Development Policy

Program Area: Right-of-Way Management, Wind Energy.

Purpose: This Instruction Memorandum (IM) provides updated guidance on processing right-of-way applications for wind energy projects on public lands administered by the Bureau of Land Management (BLM).

Policy / Action: This IM updates and replaces the Wind Energy Development Policy (IM 2006-216), issued August 24, 2006, and the Interim Wind Energy Development Policy (IM 2003-020), issued October 16, 2002. In addition, this IM further clarifies the BLM Wind Energy Development policies and best management practices (BMPs) provided in the Wind Energy Development Programmatic Environmental Impact Statement (EIS) of June 2005. Issuance of this IM ensures BLM-wide consistency in the processing of right-of-way applications and the management of authorizations for wind energy site testing and development on the public lands. The initiation of any new planning effort to create, revise, or amend a BLM land use plan will comply with policy provided in this IM. Land use planning efforts already underway will be assessed on a case-by-case basis to determine any necessary modifications or amendments.

Inventory and Planning: The BLM Land Use Planning Handbook (H-1601-1) requires that land use planning efforts address existing and potential development areas for renewable energy projects, including wind energy (see H-1601-1, Appendix C, II. Resource Uses, Section E. Lands and Realty). The BLM encourages the development of wind energy within acceptable areas, consistent with the Energy Policy Act of 2005 and the BLM Energy and Mineral Policy (August 26, 2008).

In October 2003, the BLM initiated the preparation of a Wind Energy Development Programmatic EIS to address the impacts of the future development of wind energy resources on public lands. The Department of Energy's (DOE) National Renewable Energy Laboratory (NREL) assisted the BLM in the preparation of the Programmatic EIS and provided an inventory assessment of wind energy resources on public lands in the Western United States. Appendix B of the Programmatic EIS includes wind resource potential maps for each BLM field office. The Programmatic EIS Record of Decision (ROD) addressed the amendment of individual BLM land use plans and established both policies and BMPs regarding the development of wind energy resources on BLM-administered public lands. The revised BLM wind energy policies and BMPs are included as Attachment 1 to this IM. Wind energy site testing and monitoring activities are typically in conformance with existing land use plans and, therefore, a land use plan amendment to address these activities is not likely to be necessary.

In cases where wind energy development proposals are not in conformance with an existing land use plan, it may be appropriate to amend the land use plan concurrently using the same analysis for the wind energy development proposal. Field offices with land use plans that were not amended by the Programmatic EIS Record of Decision may amend their plans at anytime by following the requirements under 43 CFR 1610.5-5. When considering a proposed plan amendment, field offices will tier to, or incorporate analysis from, the Programmatic EIS as appropriate under Chapter V of the BLM National Environmental Policy Act (NEPA) Handbook (H-1790-1).

All land use planning efforts initiated after the issuance of this IM will address wind resource potential, public concerns, and opportunities for wind energy development within the land use planning area consistent with

the BLM Land Use Planning Handbook (appendix C). Field offices will incorporate wind energy resource development potential in these planning efforts to facilitate the processing of future wind energy applications. The land use plan revision process will address the environmental and public concern issues associated with commercial wind energy development. This will provide an opportunity to potentially reduce the amount of additional environmental review and documentation required to process a specific application in the future.

Information on wind energy resources is available at www.energyatlas.org. In addition, wind resources information is also available from the Department of Energy site at www.eere.energy.gov/windandhydro/windpoweringamerica/wind_maps.asp. Field offices are encouraged to use this information as the inventory base for land use planning.

Visual Resource Management (VRM)

The BLM Land Use Planning Handbook requires that VRM management classes be identified in land use plans based on inventories of visual resources as well as management considerations for other potential land uses (e. g., wind energy development). The VRM management classes may differ from VRM inventory classes based on the management priorities for land uses in an area. The VRM management classes are intended to establish landscape management objectives for a variety of surface disturbing activities. The VRM management classes are not intended to be used to exclude or preclude land uses, including opportunities for development of wind energy in areas with high wind energy resource potential.

Therefore, it is critical that when the BLM makes land use decisions it considers the attainability and manageability of VRM objectives relative to the wind energy resources and development potential and is consistent with our national energy priorities.

The VRM management class designations must be carefully considered in areas with high wind energy resource potential (wind power class 5 and above). This is especially important when considering the differences in resource management constraints relative to VRM Class II and Class III management classes in a planning area. The goal of the VRM program is to apply the basic principles of design of wind energy projects at the site-specific project level to mitigate or minimize visual resource impacts and meet VRM objectives established in the land use plan. In many cases, VRM management objectives designated at the land use planning level can be met through strategic placement of facilities and thoughtful design treatments that visually integrate the facilities into the landscape setting, thereby avoiding unnecessary land use plan restrictions. Performing Geographic Information Systems-based (GIS) viewshed analyses in areas of high wind energy resource potential and high visual resource values during land use planning can assist in determining suitability and compatibility between these resources, promote more integrated resource management, and avoid unwarranted exclusion and avoidance designations. Application of state-of-the-art digital terrain modeling and visual simulations as well as an integrated environmental design approach to project planning will go far to successfully integrate wind energy projects into the visual landscape. Conducting such analyses will provide the BLM with more objective criteria and defensible analysis to base VRM management class designations in the future. The BLM and wind energy operators will work collaboratively to seek creative ways to provide for renewable energy development while protecting visual resource values on the public lands.

Wildlife and Migratory Birds

In July 2003, the Fish and Wildlife Service (FWS) issued "Voluntary Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines." The guidelines are currently being reviewed by a Wind Turbine Guidelines Advisory Committee established under the Federal Advisory Committee Act (FACA) to provide further advice and recommendations to the Secretary of the Interior (Secretary) on effective measures to avoid or minimize impacts to wildlife and their habitats from wind energy facilities. The voluntary interim guidelines are not mandatory requirements in BLM land use plan decisions. Until the Secretary determines the applicability of final guidelines for the Department of the Interior (DOI) agencies, the FWS interim guidelines should only be used as a general guide to assist the BLM in siting decisions and the design of pre-development surveys, mitigation measures, and post-construction monitoring for site-specific projects.

The BLM Washington Office IM 2008-050 (December 18, 2007) provides interim guidance for Federal responsibilities under the Migratory Bird Treaty Act. This guidance addresses analysis of BLM land use planning decisions to avoid or minimize measurable negative impacts to migratory bird populations. The BLM guidance on migratory birds and the FWS guidelines may be used for site-specific wind energy projects to assist in developing mitigation measures for
avoiding or minimizing impacts to wildlife and avoiding or minimizing measurable negative impacts to

migratory birds. The BLM 6840 Manual also provides guidance on Special Status Species Management.

Areas of Critical Environmental Concern (ACEC)

The BLM will not issue right-of-way authorizations for wind energy development for areas in which wind energy development is incompatible with specific resource values. Specific lands excluded from wind energy site testing and monitoring and wind energy development include designated areas that are part of the National Landscape Conservation System (NLCS) (e.g., Wilderness Areas, Wilderness Study Areas, National Monuments, National Conservation Areas, Wild and Scenic Rivers, and National Historic and Scenic Trails). Wind energy development is permitted in one National Conservation Area, the California Desert Conservation Area (CDCA), in accordance with the provisions of the *California Desert Conservation Area Plan 1980.*

The Wind Energy Programmatic EIS established the previous policy that all ACECs were to be excluded from wind development. This IM changes this policy to ensure consideration of the purpose and specific environmental sensitivities for which the area was designated. All new, revised, or amended land use planning efforts will address and analyze ACEC land use restrictions individually, including restrictions to wind energy development. For future land use planning efforts, ACECs will not universally be excluded from wind energy site testing and monitoring or wind energy development but will be managed consistent with the management prescriptions for the individual ACEC. Existing land use plans and planning efforts may be amended as necessary, with appropriate level of NEPA analysis and decision, to address this change in wind energy and ACEC policy, consistent with the procedures of 43 CFR 1610.5.5. A site-specific land use plan amendment to address this change in policy may be addressed concurrently with the processing of a wind energy application. This revised policy will continue to provide protection of sensitive resource values in ACECs consistent with the management prescriptions for the individual ACEC.

Avoidance and Exclusion Areas

Land use plans may identify right-of-way avoidance areas or exclusion areas under the BLM land use planning guidelines (see Appendix C of the BLM Land Use Planning Handbook H-1601-1). Avoidance areas, as defined by the land use planning guidelines, do not preclude the issuance of rights-of-way for wind energy site testing and monitoring activities or wind energy development or preclude the issuance of permits, leases, or easements under Section 302 of the Federal Land Policy and Management Act (FLPMA). These uses in avoidance areas may be available with special stipulations or mitigation measures. For such authorizations, the area's environmental sensitivity and other feasible alternatives will be strongly considered.

Applications: All wind energy and wind energy-related facilities will be applied for under Title V of the FLPMA and Title 43, Part 2800 of the Code of Federal Regulations. The regulations cited in this IM refer to the right-of-way regulations which were published in the *Federal Register* on April 22, 2005, and became effective on June 21, 2005.
Wind energy site testing and monitoring facilities (meteorological towers) will not be authorized by a land use permit under the 43 CFR 2920 regulations but will be authorized as FLPMA rights-of-way. Geotechnical testing activities for foundation designs or other purposes will be authorized, however, by a land use permit under the 43 CFR 2920 regulations.

Applications for a wind energy right-of-way grant may be submitted for one of the following three types of wind energy projects:

1. A site-specific grant for individual meteorological towers and instrumentation facilities with a term that is limited to 3 years;
2. A project area grant for a larger site testing and monitoring area, with a term of 3 years that may be renewed consistent with 43 CFR 2807.22 and the provisions of this IM beyond the initial term of the grant; or
3. A development grant with a term that is not limited by the regulations, but will generally be for a term of 30 years.

Preapplication

Applications for any of the above projects will be submitted using Form SF-299, Application for Transportation and Utility Systems and Facilities on Federal Land, consistent with the requirements of 43 CFR 2804.12. The BLM authorized officer will encourage wind energy applicants to schedule preapplication meetings (43 CFR 2804.10) with the BLM to:

- Assist in the preparation and processing of applications,

- Identify potential issues and conflict areas,
- Identify visual resource issues and define the viewshed area of the proposed project for visual resources modeling,
- Identify any environmental or cultural resource studies that may be needed,
- Assess public interest and concerns,
- Identify other authorized uses,
- Identify other general recreation and public uses in the area,
- Discuss potential alternative site locations, and
- Discuss potential financial obligations (cost recovery fees, rental, and bonding) that the applicant must be willing to assume.

Coordination

Early informal public contacts with local community leaders and other interested parties are important in increasing public awareness and avoiding potential conflicts, especially in areas where other uses exist on the public lands. The applicant is encouraged to meet jointly with the BLM and the state wildlife agency early in the process to facilitate coordination on potential wildlife issues. Upon determining that the application is complete, the BLM field office will initiate consultation with the Department of Defense (DOD) on potential military airspace conflicts for both site testing and monitoring applications and for wind development projects, consistent with interagency protocol procedures. The military protocol procedures and a listing of DOD points-of-contact (Regional Environmental Coordinators) for consultation purposes are provided at www.blm.gov/wo/st/en/prog/energy/wind_energy.html. The BLM will initiate the consultation with the DOD within 30 days after receipt of a complete wind energy right-of-way application. In addition, the applicant is encouraged to submit the required filings with the Federal Aviation Administration (FAA) as early in the application process as possible to identify any air safety and lighting measures that will be required for the project. In addition, after meteorological towers are authorized and constructed, the BLM will ensure the location of these towers are noted on aerial navigation hazard maps for low-level flight operations that may be undertaken by the BLM and other Federal or state agencies for fire operations, wild horse and burro census and gathers, wildlife inventories, facility maintenance, or other activities.

Fees

All wind energy right-of-way applications and authorizations are subject to appropriate cost recovery fees for processing and monitoring as well as rental fees as required by 43 CFR 2804.14, 43 CFR 2805.16, and 43 CFR 2806.10. The policy guidance on rental fees contained in this IM is based on comparable payment practices for existing wind energy right-of-way authorizations on Federal and non-Federal lands. Wind energy right-of-way authorizations are considered non-linear right-of-way grants and, therefore, are not subject to the requirements of 43 CFR 2806.23 regarding multiyear rental payments. However, by policy, the holder of a wind energy site testing and monitoring right-of-way grant may pay the required rental fee for the entire term of the grant in advance.

Processing Timeframes

Right-of-way applications for wind energy site testing and monitoring or wind energy development projects will be identified as a priority field office workload and will be processed in as timely a manner as possible. The processing time frames for right-of-way applications as required by 43 CFR 2804.25 will be followed for all wind energy applications. Site testing and monitoring right-of-way applications should be processed within a 60-day time frame, consistent with the requirements of 43 CFR 2804.25. The regulations require that the authorized officer notify the right-of-way applicant in writing if processing will take longer than 60 days, the reasons for the delay, and an estimate of the time frame for processing the application. The BLM Washington Office, Land, Realty and Cadastral Survey Division (WO-350) may be able to assign a right-of-way project manager, if requested by the state director, to coordinate the processing of any major wind energy development right-of-way application.

Authorizations:

1. Site-specific Grant for Testing and Monitoring:

A site-specific FLPMA right-of-way grant (Form 2800-14) will be used to authorize individual meteorological towers and instrumentation facilities. The area authorized for these facilities will be the minimum necessary for construction and maintenance of the temporary facility and any access required to the site. The term of a site-specific right-of-way grant will be limited to
3 years from the date of issuance. A site-specific right-of-way grant will not be renewed beyond this term. A new right-of-way application will be required if the holder of the site-specific right-of-way grant wishes to

continue monitoring at the site. Numerous site-specific right-of-way grants for wind energy site testing and monitoring may be issued to various right-of-way holders in the same area and do not establish any exclusive or preferential rights regarding future wind energy development. In addition, the BLM retains the right to authorize other compatible uses of the public lands in the area.

Rent: The rental fee for a site-specific right-of-way grant for wind energy site testing and monitoring will be a minimum of $100 per year for each meteorological tower or instrumentation facility location and includes no additional rental fee for the acreage of each site location. Some BLM field offices have existing site-location rental fees for temporary facilities on the public lands that can be used for wind energy site testing and monitoring facilities. In some cases these fees will exceed the minimum $100 per year fee. The rental fee for a site testing and monitoring right-of-way grant is paid annually, in advance, on a calendar-year basis consistent with the regulations (43 CFR 2806.12). However, by policy, the holder of a site-specific right-of-way grant may pay the required rental fee for the entire term of the grant in advance.

Grant Administration: Each site-specific site testing and monitoring authorization will contain appropriate BMPs and may contain appropriate site-specific stipulations, including but not limited to road construction and maintenance, vegetation removal, and number and location of wind monitoring sites. A bond will be required for site testing and monitoring authorizations to ensure compliance with the terms and conditions of the authorization. A minimum bond in the amount of $2,000 per meteorological tower will be required for all authorizations. The amount of the reclamation bond may include potential reclamation and administrative costs to the BLM.

The wind inventory data collected and held by the right-of-way grant holder is proprietary information, will be protected by the Privacy Act, and may be withheld under the Freedom of Information Act to the extent allowed by Federal law.

Site testing and monitoring authorizations may be assigned consistent with the provisions of the regulations (43 CFR 2807.21). However, all assignments must be approved by the BLM authorized officer and the qualifications of all assignees must comply with the Due Diligence section of this IM and the requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)).

2. Project Area Grant for Testing and Monitoring:

A FLPMA right-of-way grant (Form 2800-14) that includes provisions for renewal beyond the 3-year term (43 CFR 2807.22) will be used to authorize wind energy site testing and monitoring facilities for a project area and the access required to the project area and facilities. A project area as used in this IM describes an area of land where wind resource information is being collected to determine the wind energy resource potential of the area. The holder of the project area grant retains an interest in the site testing and monitoring project area, but will be required to submit a separate right-of-way application (43 CFR 2807.20) and Plan of Development (POD) to the BLM for review, analysis, and separate approval for any future wind energy development proposal. The interest retained by the holder of the project area grant is only an interest to preclude other wind energy right-of-way applications during the 3-year term of the grant. The lands within the grant area will not be available for other wind energy right-of-way applications. The holder of the project area grant establishes no right to development and is required to submit a separate right-of-way application for wind energy development to the BLM for analysis, review, and decision. The BLM retains the right to authorize other compatible uses of the public lands.

Acreage: The lands involved in the project area grant will be defined by aliquot legal land descriptions and configured to involve a reasonable amount of land to support a possible right-of-way application for a wind energy development project in the future. There are no statutory or regulatory limits on the acreage of a site testing and monitoring right-of-way application; however, the BLM may request additional information from the applicant to determine if the project area is a reasonable size for a potential wind energy development project in the area. The BLM may request general information on the potential wind resources of the area, the potential project size and megawatt capacity of the area, and the potential project development configuration and limitations to assist in determining whether the application is of a reasonable size. Applicants seeking large acreage sites should be advised that the BLM will require those applicants to provide rationale describing how they would potentially develop such large acreage. The BLM is not required to accept applications that are not in the public interest; however, BLM field offices will not inappropriately limit the size of project areas that may be needed to evaluate an area for potential wind energy development. Any amendments to site testing and monitoring right-of-way authorizations that would add additional acreage to the authorization would still be limited to the 3-year term of the initial grant.

Site Testing: To assess the wind resource development potential of a project area, an applicant is not required to place site testing and monitoring facilities (meteorological towers) on every parcel of public land involved in

a project area in order to adequately assess the wind resources of a project area on public lands. In some cases, an applicant may propose to place meteorological towers on adjacent private, state, or other land without any meteorological towers on public land.

The BLM Washington Office has a funding agreement with the DOE′s NREL. Any BLM field office may request the NREL to assist in evaluating the applicant′s proposal for the siting and number of meteorological towers. In order for NREL to evaluate the proposal, the field office must submit the following information to NREL: a topographic map of the area showing the boundary of the proposed project area, land ownership, proposed location and height of the meteorological towers, and proposed access roads. The BLM Land, Realty and Cadastral Survey Division (WO-350) can provide the point-of-contact at NREL for these evaluations.

If the evaluation determines that the meteorological tower placement on adjacent non-Federal land is capable of characterizing the wind patterns on public lands, then a NEPA document will be prepared describing the Federal action as the issuance of a right-of-way grant with limited activities on the public land. If the evaluation concludes that the proposal cannot adequately assess the wind patterns on public lands or the project area proposed is not consistent with good wind testing techniques, then the applicant will be notified of this finding and given the opportunity to amend the proposal. If the proponent does not amend the application, the BLM authorized officer may reject the application.

In cases where a right-of-way grant is issued for a project area and no meteorological towers are installed on public lands, the Due Diligence section of this IM requires the proponent to install the meteorological towers on the non-Federal land within 12 months from the effective date of authorization. The holder will provide the BLM with good cause as to the nature of any delay. The purpose of the Due Diligence provisions of the IM are to preclude land speculators from obtaining a right-of-way grant for a project area with valuable wind energy resources that would preclude other applicants with serious interests in the potential development of wind energy on the public lands.

Renewal: The right-of-way grant for a project area is issued for an initial term of 3 years from the date of issuance. This term can be renewed (43 CFR 2807.22) for a term not to exceed 3 years if a separate rightâ€˜ofâ€˜way application and POD is submitted for a wind energy development project prior to the end of the initial term of the site testing and monitoring grant. A request for renewal authorization must be submitted 120 days before the end of the term of the grant (43 CFR 2807.22). However, the development right-of-way application and POD are not required to be submitted until just prior to the end of the term of the site testing and monitoring authorization. The request for renewal should be carefully reviewed to determine if the acreage requested may be reduced to reflect the area proposed for the wind energy development project.

The holder of the site testing and monitoring right-of-way grant should be advised that appropriate environmental and geotechnical studies and inventory information should be collected in conjunction with the wind energy site testing and monitoring studies during the 3-year term of the initial grant. The grant holder is required to submit a study design strategy to the BLM for review and comment in advance to ensure the environmental studies are of sufficient detail and scope for the project area. The data gathered is an integral part of preparing the initial POD for a proposed wind energy development if an application is submitted in the future. Developers should begin the required environmental studies during the initial grant period and not wait until they submit an application for renewal of the site testing and monitoring authorization.

Plan of Development: The grant holder is required to submit, prior to the end of the initial term of the site testing and monitoring grant, a separate right-of-way development application and POD to retain the interest in the project area. The applicant is encouraged to schedule a preapplication meeting with the BLM prior to submittal. The pre-application meeting will provide an opportunity to discuss the environmental and sensitive issues that may be associated with the proposed wind energy development project, processing timeframes and environmental analysis and review procedures, cost recovery requirements, and potential mitigation measures that could be included in the POD.

Concurrent submittal of a POD with the right-of-way application for the wind energy development project is consistent with the provisions of 43 CFR 2804.25. The BLM will not accept a POD that is simply a conceptual plan of development and must be of sufficient detail to provide the basic information necessary to begin the environmental analysis and review process for the proposed wind energy development project. Attachment 2 provides an outline of the minimum requirements for the initial POD.

The initial wind energy POD must be submitted prior to the end of the 3-year term of a site testing and

monitoring authorization. If the initial POD is incomplete, the wind energy right-of-way applicant will be contacted by letter and must provide a complete POD consistent with the POD requirements to the BLM within 90 days. If the applicant has not responded within
90 days, or if the applicant has responded and the information provided is not sufficient, the BLM will send a 30-day show-cause letter to the applicant prior to issuing any decision to reject the application for failure to respond pursuant to the regulations (43 CFR 2804.25(b) and 2804.26(a)(6)). During the NEPA review process, additional information may be requested of the applicant. The BLM will provide the applicant reasonable periods of time to respond to these requests for additional information.

Rent: The rental fee for a project area grant will be based on the total public land acreage of the project area included in the right-of-way grant. The rental fee for the total public land acreage of the grant will be $1,000 per year or $1 per acre per year, whichever is greater. This rental fee is based on comparable fees on non-Federal lands and is consistent with the limited use of the land. There is no additional fee for the installation of each meteorological tower or instrumentation facility located within the site testing and monitoring project area. This rental fee is based on the value of the use of the area for site testing and monitoring and the value of the option held by the holder that precludes other wind energy right-of-way applications during the 3-year term of the grant, comparable to similar option payments on private lands. The rental fee for a site testing and monitoring right-of-way grant is paid annually, in advance, on a calendar-year basis consistent with the regulations (43 CFR 2806.12). However, by policy, the holder of a site testing and monitoring right-of-way grant may pay the required rental fee for the entire term of the grant in advance.

Grant Administration: Each project area grant will contain appropriate BMPs and may contain appropriate site-specific stipulations, including but not limited to road construction and maintenance, vegetation removal, and number and location of wind monitoring sites. A bond will be required for site testing and monitoring authorizations to ensure compliance with the terms and conditions of the authorization. A minimum bond in the amount of $2,000 per meteorological tower will be required for all authorizations. The amount of the reclamation bond may include potential reclamation and administrative costs to the BLM.

The wind inventory data collected and held by the right-of-way grant holder is proprietary information, will be protected by the Privacy Act, and may be withheld under the Freedom of Information Act to the extent allowed by Federal law. However, general wind resource information must be provided to the BLM, at the time a separate right-of-way application for development is submitted, to support the environmental analysis and review of the proposed development. This information becomes public information to the extent allowed by Federal law and will be used for analysis and decision-making purposes related to the processing of the right-of-way application for a wind energy development project. Biological and cultural resource studies and data collected by the right-of-way grant holder and provided to the BLM will become public information to the extent allowed by Federal law.

Site testing and monitoring authorizations may be assigned consistent with the provisions of the regulations (43 CFR 2807.21). However, all assignments must be approved by the BLM authorized officer and the qualifications of all assignees must comply with the Due Diligence
section of this IM and the requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)). A partial assignment of a site testing and monitoring authorization will not be approved if such action would hinder the BLM management of the authorization or the associated public lands.

3. Development Grant:

A FLPMA right-of-way grant (Form 2800-14) will be used to authorize all facilities held by the holder of the grant on the public lands related to a commercial wind energy development project. This authorization will include the wind turbine facilities as well as the onsite access roads, electrical and distribution facilities, and other support facilities authorized by the wind energy development right-of-way grant. Other offsite facilities, such as electrical transmission and additional access roads, may require a separate linear right-of-way authorization. The lands involved in the development grant will be defined by aliquot legal land descriptions and be configured to minimize the amount of land involved, while still allowing an adequate distance between turbine positions and reasonable right-of-way boundaries. In the absence of any specific local zoning and management issues, no turbine will be positioned closer than 5 rotor-diameters from the center of the wind turbine to the right-of-way boundary in the dominant upwind or downwind direction to avoid potential wind turbulence interference issues with adjacent wind energy facilities unless it can be demonstrated that site conditions, such as topography, natural features, or other conditions such as offsets of turbine locations, warrant a lesser distance. Further, for safety reasons, no turbine on public land will be positioned closer than 1.5 times the total height of the wind turbine to the right-of-way boundary. In cases where the applicant holds a long-term lease right on adjacent Federal or non-Federal lands for wind energy development or the adjacent non-Federal landowner provides a setback waiver, these minimum setbacks may be eliminated, allowing turbines to be placed closer to the right-of-way boundary.

The right-of-way holder should be encouraged, through terms and conditions of the right-of-way authorization, to work with the BLM to increase the public awareness of the benefits of wind energy development by providing information and public points-of-access near the development where safe and appropriate. These measures may include onsite interpretive resources and photo locations. The BLM and right-of-way holder may provide a positive message on the responsible use of renewable resources and the multiple resource uses of the public lands.

Rent: The rental fee for a development grant has been updated from the fee originally established by the Interim Wind Energy Development Policy in October 2002. The new rental fee established by this IM is $4,155 per megawatt of the total anticipated installed capacity of the wind energy project on public land based on the approved POD, a capacity factor of 30 percent, a Federal rate of return of 5.27 percent, and an average purchase price of $0.03 per kilowatt hour. The Federal rate of return is based on the 10-year average of the 30-year Treasury bond yield (January 1998 to January 2008). The rental fee is a fixed annual BLM-wide rent based on the following formula:

Annual rent = (Anticipated total installed capacity in kilowatts on public land as identified in the approved POD) x (8760 hours per year) x (30 percent capacity factor) x (5.27 percent federal rate of return) x ($0.03 average price per kilowatt hour).

Example for one megawatt (1,000 kW) of anticipated total installed capacity on public land:

Annual rent = (1,000 kW) x (8760 hours) x (0.30 capacity) x (0.0527 rate of return) x ($0.03 per kWh) or $4,155 per megawatt of anticipated total installed capacity on public land.

The annual rental fee will be phased in as follows:

First year	- 25 percent of the total rental fee or $1,039 per megawatt
Second year	- 50 percent of the total rental fee or $2,078 per megawatt
Third year	- 100 percent of the total rental fee or $4,155 per megawatt

The full annual rental fee will apply at any time prior to 3 years upon the start of commercial operations of the project. The rental fee is paid annually, in advance, on a calendar-year basis consistent with the regulations (43 CFR 2806.12). The BLM will not assess a separate turbine installation fee (an additional one-time payment for each turbine installation), a production rental fee, or other fees as part of the wind energy rental fee. Any separate linear right-of-way authorizations issued for offsite facilities to support the wind energy project, such as electrical transmission lines, will be subject to the linear right-of-way rental provisions of 43 CFR 2806.20.

All wind energy right-of-way holders are subject to rent in accordance with this IM, unless they are specifically exempt from rent by statute or regulation. Some holders or facilities may be exempt from rent pursuant to the Rural Electrification Act of 1936, as amended (43 CFR 2806.14(d)).

Grant Administration: The term of a development grant is not limited by the regulations; however, the terms of most existing grants for major wind energy development projects recognize the overall costs and useful life of wind energy facilities and are generally for a term of 30 years. The grant may be renewed for additional terms, consistent with the provisions of the regulations (43 CFR 2807.22). The BLM also retains the right to authorize other compatible uses of the public lands within the right-of-way grant during the term of the grant.

A bond will be required for all development grants to ensure compliance with the terms and conditions of the right-of-way authorization and the requirements of applicable regulatory requirements. The amount of the bond may include potential reclamation and administrative costs to BLM. A minimum bond in the amount of $10,000 per wind turbine, considering salvage values of turbines and towers, will be required for all wind energy development projects on public lands. However, the amount of the required bond will be determined during the right-of-way authorization process on the basis of site-specific and project-specific factors. Acceptable bond instruments include cash, cashier's or certified check, certificate or book entry deposits, negotiable U. S. Treasury bonds equal in value to the bond amount, or surety bonds from the approved list of sureties (U. S. Treasury Circular 570) payable to the Bureau of Land Management. A letter of credit is not an acceptable form of bond. All bonds will be periodically reviewed (at least every 5 years) by the BLM authorized officer to ensure adequacy of the bond.

The development grant may be assigned consistent with the provisions of the regulations (43 CFR 2807.21). However, all assignments must be approved by the BLM authorized officer and the qualifications of all assignees must comply with the Due Diligence section of this IM and the requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)). A partial assignment of the grant will not be approved if such

action would hinder the BLM management of the authorization or the associated public lands.

All final decisions issued by the authorized officer in connection with the authorization of any of the above described wind energy projects are appealable under 43 CFR Part 4 (43 CFR 2801.10). It should also be noted that right-of-way grants are issued as full force and effect decisions (43 CFR 2801.10(b)) and will remain effective during any appeal period, unless stayed by the Interior Board of Land Appeals (IBLA).

Competitive Interest: The right-of-way regulations (43 CFR 2804.23(c)) provide authority for identifying public lands under competitive bidding procedures for wind energy right-of-way authorizations. However, the BLM will only initiate a competitive process if a land use planning decision has specifically identified an area for competitive wind energy leasing. The Programmatic EIS and associated ROD did not identify any competitive wind energy leasing areas for any BLM land use plans; therefore, any competitive leasing areas would need to be identified through a local land use planning process. Site testing and monitoring or wind energy development right-of-way applications will be processed, therefore, on a first-come basis. The BLM will encourage applicants who may have an interest in a common area to establish a partnership or cooperative agreement that establishes compatible use of the site among the applicants. If the applicants choose not to form a partnership or cooperative agreement, the BLM will proceed to process the first complete application with attached cost recovery fees required by 43 CFR 2804.14.

Due Diligence: There are some concerns regarding the potential for land speculators to obtain right-of-way grants and control valuable wind energy resource areas that would preclude other applicants with serious interests in the potential development of wind energy on the public lands. These concerns can be mitigated by applying the applicant qualification requirements of the regulations (43 CFR 2804.12(a)(5) and 43 CFR 2804.26(a)(5)) and requiring certain due diligence provisions in the right-of-way authorization for site testing and monitoring or wind energy development.

Technical and Financial Capability

The regulations provide authority to require the application to include information on the applicant's technical capability to construct, operate, and maintain the wind energy facilities and associated transmission facilities (43 CFR 2804.12(a)(5)). This technical capability can be demonstrated by international or domestic experience with wind energy projects or other types of electric energy-related projects on either Federal or non-Federal lands. The applicant should provide information on the availability of sufficient capitalization to carry out development, including the preliminary study phase of the project, as well as the site testing and monitoring activities. Actual development or ownership of similarly-sized wind energy facilities or other types of electric energy-related facilities within the last 5 years by the applicant would generally constitute evidence of financial capability. However, applicants in bankruptcy or other related financial difficulties may not be able to meet the due diligence provisions of the right-of-way authorization. Attachment 2 provides an outline of the information to include in the POD, which requires the submittal of information on the financial and technical capability of the applicant. The regulations provide the authority to deny the application if the applicant cannot demonstrate adequate technical ability to construct, operate, and maintain the wind energy facilities (43 CFR 2804.26(a)(5)).

Terms and Conditions

Due diligence is encouraged by the limited 3-year term of the site testing and monitoring right-of-way authorization. The project area grant can only be renewed if a separate right-of-way application and POD is submitted for a wind energy development project prior to the end of the initial term of the project area grant. In addition, the site testing and monitoring authorization and the wind energy development authorization will include a due diligence requirement for installation of facilities consistent with an approved POD.

The following due diligence requirements must be included in the terms and conditions of either the site testing and monitoring authorization or the wind energy development authorization:

- If monitoring facilities under a site testing and monitoring right-of-way authorization have not been installed within 12 months after the effective date of the authorization or consistent with the timeframe of the approved POD, the holder will provide the BLM good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward site monitoring activities.
- If construction of wind energy facilities under a wind energy development authorization has not commenced within 2 years after the effective date of the grant or consistent with the timeframe of the approved POD, the right-of-way holder will provide the BLM good cause as to the nature of any delay, the anticipated date of construction, and evidence of progress toward commencement of construction.

Failure of the holder to comply with the due diligence terms and conditions of either the site testing and monitoring authorization or the wind energy development authorization provides the authorized officer the authority to terminate the authorization (43 CFR 2807.17). The rental fee provisions outlined in this IM also mitigate, to some extent, the concerns regarding due diligence.

Environmental Review: The Programmatic EIS addressed a range of alternatives including the proposed action that would implement a wind energy development program with the establishment of a set of policies and BMPs for wind energy development on the public lands. In accordance with this IM, the BLM is clarifying some of the policies and BMPs established in the Programmatic EIS. In particular, ACECs will not be universally excluded from wind energy site testing and monitoring or wind energy development but will be managed consistent with the management prescriptions for the individual ACEC. Consistent with the analysis in the Programmatic EIS, this revised policy will continue to provide protection of sensitive resource values in ACEC areas and will not result in effects outside the range of effects analyzed in the Programmatic EIS.

The revised policies and BMPs are included in attachment 1 of this IM and are applicable to all wind energy activities on BLM-administered public lands. The BMPs establish environmentally sound and economically feasible mechanisms to protect and enhance natural and cultural resources. They identify the issues and concerns that need to be addressed by project-specific plans. Mitigation measures protecting these resources will be required to be incorporated into the project POD. These mitigation measures will include the specific programmatic BMPs as well as additional mitigation measures contained in other existing and relevant BLM guidance or stipulations developed to address site-specific or species-specific concerns through project-level analysis.

To the extent that the Programmatic EIS addresses anticipated issues and concerns associated with an individual wind energy project, including potential cumulative impacts, the BLM will, by policy, tier off of the analysis in the Programmatic EIS and limit the scope of additional project-specific NEPA analyses. The site-specific NEPA analyses will include analysis of project site configuration and micrositing considerations, monitoring program requirements, and appropriate site-specific stipulations. In addition, offsite compensatory mitigation may be appropriate to consider for some projects consistent with BLM offsite mitigation policies (see IM 2008-204 dated September 30, 2008).

1) Site-specific or Project Area Applications: The scope of the environmental analysis required for either a site-specific application or a project area application includes direct, indirect, and cumulative effects of the proposed site testing and monitoring-related facilities. The site testing and monitoring right-of-way authorization is for a limited term (3 years) and usually includes only a few wind monitoring towers with instruments attached to measure various meteorological parameters such as wind speed, wind direction, and temperature at various heights above the ground. The footprint for each monitoring tower is small and the need for site clearances should be limited to the areas of proposed surface disturbance and associated areas of potential effect. Some newer technologies using sonar equipment are also being used to collect wind data. This type of equipment also has a small footprint and requires little or no surface disturbance.

The environmental review should not address wind energy development facilities, as the installation of wind turbines are not proposed during site testing and monitoring. The environmental review of wind energy development facilities will occur at the point in time when a wind energy development application is submitted. The reasonably foreseeable development discussions in the environmental analysis for a site testing and monitoring right-of-way application should focus on anticipated installation of additional wind monitoring facilities during the term of the right-of-way grant. Typically only a small number of wind energy site testing and monitoring authorizations ever lead to actual wind energy development projects. Therefore, the reasonably foreseeable development discussion should not focus on uncertain future development scenarios. However, the cumulative impacts of other wind energy site testing activities and any other reasonably foreseeable activities that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis.

Categorical Exclusion: The use of a Categorical Exclusion (CX) for the issuance of short-term right-of-way authorizations may be applicable to site testing and monitoring activities or sites. The relevant CX as identified by the BLM NEPA Handbook, H-1790-1, Appendix 4, Section E. 19 (January 30, 2008), encompasses "issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition." Although the authorization is for a project area, the use is limited to a small site with potentially short-term minimal impacts. The CX for "nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research and monitoring activities" may also be applicable to wind energy site testing and monitoring activities. However, these site testing and monitoring activities must be subject to sufficient review to determine if any of the extraordinary circumstances identified in the guidelines apply.

A project area authorization is limited in term to 3 years. Although a project area authorization may be renewed, the holder is required to submit a separate right-of-way application for any wind energy development project. The right-of-way regulations (43 CFR 2807.20) require that the application be submitted and processed consistent with the provisions of 43 CFR Subpart 2804 as a separate and distinct application. The right-of-way grant holder has established no right to development and is required to submit a separate application to BLM for analysis, review, and decision. The proposed wind energy development project will be evaluated upon the submittal of an actual application for the development project. *Alliance to Protect Nantucket Sound, Inc. v. United States Department of the Army*, 288 F. Supp.2d 64, 80 (D. Mass. 2003), *affd*, 398 F.3d 105 (1st Cir. 2005), supports the proposition that an authorization to collect wind data and an authorization to develop a wind energy development project are not "connected actions," as that term is defined at 40 CFR 1508.25. The court held that the Army's authorization of a data tower in Nantucket Sound does not automatically trigger the authorization for a wind energy project; that information from the data tower was not required for the wind energy project but may be used if available and relevant; and that the data tower's utility does not depend on the ultimate authorization of the wind energy project. A contrary decision was reached in *Blue Ocean Preservation Society v. Secretary of Energy*, 754 F. Supp. 1450 (D. Hawaii 1991), so it is advisable to consult with the Solicitor's Office in complex cases.

2) Development Application: The scope of the NEPA analysis and the compliance requirements with the Endangered Species Act, the National Historic Preservation Act, and other laws for a wind energy development right-of-way application will be broader than a site testing and monitoring application as the installation of wind turbines, access roads, and electrical transmission facilities will be addressed in the wind energy development NEPA analysis. However, the footprint of wind energy facilities is typically smaller than other types of energy production facilities. The level of site clearances should be limited to the areas of proposed surface disturbances and associated areas of potential effect, including the access roads to wind turbine locations as well as the electrical transmission and other support facilities. The wind energy development facilities, however, may extend over a large geographic area and have a broad area of influence. The potential impact from these facilities may, therefore, extend beyond the small footprint of the individual wind turbine locations and it may be necessary to provide setbacks from important natural resource areas.

The reasonably foreseeable development discussion in the environmental analysis for a wind energy development project should focus on the potential for installation of additional wind turbines and increased production and electrical transmission from the project area. In addition, the cumulative impacts of other wind energy projects and any other reasonably foreseeable projects that potentially impact the same environmental resources in the area are required to be addressed in the environmental analysis. Project-specific environmental analyses for wind energy development tiered to the analyses conducted in the Programmatic EIS allow the project-specific analyses to focus just on the critical, site-specific issues of concern. For this reason, tiering to the Programmatic EIS is the preferred approach when appropriate. Tiering to the Programmatic EIS would allow for the preparation of an Environmental Assessment (EA) for an individual action as long as the remaining effects of the individual action are not significant. The level of NEPA documentation necessary will be determined based on the context and intensity of the proposed action and how much analysis may be tiered to the Programmatic EIS. It may also be possible to combine the required environmental review process for a wind energy development project with applicable state or local environmental procedures for energy facility siting. This would both streamline the process and be consistent with Departmental policy on intergovernmental cooperation.

LR 2000 Data Entry: Commodity code 974 (Wind Energy Facilities) will generally be used with case type 285003 to identify wind energy site testing and development right-of-way applications and authorizations, and ancillary facilities that are authorized with the same grant as the wind facility. Commodity code 974 will not be used for ancillary rights-of-way (transmission lines and roads) that are authorized as separate grants. Action codes were also established in LR 2000 in September 2005 to track compliance with the customer service standards of the right-of-way regulations. These Action codes also apply to wind energy applications and authorizations. The Remarks section of LR 2000 for a wind energy site testing and monitoring case is required to identify the number of meteorological towers authorized and located on the public land. In addition, the Remarks section for a wind energy development case is required to identify the number of turbines and total MW capacity authorized and located on the public land.

Timeframe: This IM is effective immediately upon receipt. Pending applications will be processed consistent with the provisions of this IM. Existing wind energy right-of-way authorizations requiring amendments may include provisions of this IM. Any amendment of an existing wind energy right-of-way grant that includes an adjustment of rental provisions consistent with this IM will be effective at the next billing date after

the amendment is made.

Budget Impact: The application of this policy will have some impact on budget. However, wind energy right-of-way applications are subject to the cost recovery provisions of the regulations and most applications for a wind energy development right-of-way will probably meet the criteria for full reasonable costs (43 CFR 2804.14(b)). In addition, BLM monitoring activities are also subject to the cost recovery provisions of the regulations. Workload impacts should be clarified through the streamlined procedures identified by this IM and by the priority established for processing wind energy right-of-way applications. There is also a positive impact through the implementation of consistent procedures in the processing of wind energy rightâ€'ofâ €'way applications.

Background: As part of an overall strategy to develop a diverse portfolio of domestic energy supplies for our future, the National Energy Policy of 2001 and the Energy Policy Act of 2005 (Public Law 109-58, August 8, 2005) encourage the development of renewable energy resources, including wind energy. Section 211 of the Energy Policy Act established a goal that the BLM would approve 10,000 megawatts of non-hydropower renewable energy projects on the public lands by 2015. The development of wind energy will be an important contribution to that goal. The BLM Energy and Mineral Policy, signed by the Director on August 26, 2008, also recognizes that the public lands are an important source of the Nation′s renewable energy resources, including wind energy.

The United States has significant potential for wind energy development, especially on Federal lands in the West. The Federal wind energy production tax credit, stateâ€'level tax credits, and other incentives, including renewable energy portfolio standards in several states, have generated a strong interest in commercial wind energy projects on BLM-administered public lands. Project proposals on public land will create a workload that demands a commitment of resources and a priority to the timely and consistent processing of right-of-way applications for wind energy site testing and monitoring activities and for commercial wind energy development.

Manual/Handbook Sections Affected: This Instruction Memorandum and policy amends BLM Right-of-Way Management Manual 2801 and Handbook H-2801-1.

Coordination: This IM incorporates the policies and BMPs established by the Programmatic EIS and associated ROD. Preparation of the Programmatic EIS provided an opportunity for public comment and input on the proposed BLM wind energy program, policies, and BMPs as well as land use plan amendments. Preparation of this IM was coordinated with the Division of Decision Support, Planning and NEPA (WO-210), the Division of Fish, Wildlife and Plant Conservation (WO-230), and the Division of Recreation and Visitor Services (WO-250). The BLM state offices were also provided an opportunity to review the IM and provide input prior to finalization.

Contact: If you have any questions concerning the content of this IM, please contact Michael D. Nedd, Assistant Director, Minerals and Realty Management, at 202-208-4201, or your staff may contact the BLM Land, Realty and Cadastral Survey Division (WO-350). Points of contact for wind energy right-of-way questions include Rick Stamm, Realty Specialist, at 202-452-5185 and Ray Brady, Energy Policy Lead, at 202-557-3378.

Signed by:
Henri R. Bisson
Acting, Director

Authenticated by:
Robert M. Williams
Division of IRM Governance,WO-560

2 Attachments
1 − BLM Wind Energy Program − Policies and Best Management Practices (19 pp)
2 − Wind Energy Plan of Development (4 pp)